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From: Deputy Assistant Judge Advocate General, Legal Assistance (Code 16)

Subj: FEDERAL TRADE COMMISSION AND FEDERAL COMMUNICATIONS
COMMISSION DO NOT CALL RULES (LAPA 06-04)

1. Congress passed two Acts in response to consumer concerns about the growing number of unsolicited telephone marketing calls to their homes and the increasing use of automated and prerecorded messages. The Acts, the Telephone Consumer Protection Act (TCPA) and the Telemarketing Consumer Fraud and Abuse Prevention Act (TCFAPA) were passed in 1991 and 1994 respectively. The Federal Communications Commission (FCC) enforces the TCPA and the Federal Trade Commission (FTC) enforces the TCFAPA. Each agency has promulgated rules to regulate telephone solicitation and to aid consumers who wish to limit these unwanted calls.

2. The FTC issued the Telemarketing Sales Rule (TSR) in 1995. The Rule was amended on January 29, 2003. Like the original TSR, the amended Rule implements the TCFAPA. The TCFAPA gives the FTC and state attorneys general tools to combat telemarketing fraud, gives consumers added privacy protections and defenses against unscrupulous telemarketers, and helps consumers tell the difference between fraudulent and legitimate telemarketing. The TSR applies to telemarketers who market using interstate calls, carries an \$11,000.00 civil penalty per violation, protects consumer privacy, prevents harassment, requires disclosures in credit, prize or negative option transactions, and addresses charitable solicitations.

3. On June 26, 2003, the FCC revised its rules implementing the TCPA. The FCC rules apply to both inter- and intrastate calls, provides a private cause of action for citizens, places restrictions on abandoned calls, sets specific time periods in which telemarketers may call, limits the use of auto dialers, artificial and prerecorded voice calls, and requires businesses to provide information via Caller ID. To assist consumers in their fight against the intrusion of telemarketing calls, the FCC in coordination with the FTC created the National Do-Not-Call Registry.

4. The National Do-Not-Call Registry applies to all telemarketers (with the exception of certain non-profit organizations), and covers both interstate and intrastate telemarketing calls. Once a consumer is listed on the registry commercial telemarketers are not allowed to call. Registration is free, and once registered the phone number will remain on the list for five years. A consumer may re-enter their number onto the list when the five years have passed, and they may remove their name from the list at any time. Consumers can register on-line or by telephone for the national do-not-call registry. To register on-line log on to [National Do Not Call Registry](http://www.donotcall.gov) at www.donotcall.gov. To register by telephone, consumers may call 1-888-382-1222; for TTY call 1-866-290-4236. The consumer must call from the phone number they wish to register.

5. Many states also have laws regulating telemarketing. States have the option to use the National Do-Not-Call Registry, to establish their own registry, or to maintain both.

Additionally the state requirements may be more stringent than those established by the federal regulations. The existence and status of each state's do-not-call registry is listed in Appendix 1 along with a link to that states information on telemarketing regulation.

6. Definitions of terminology used in the Rules.

Abandoned Call: a telephone communication that is not connected to a live sales representative within two (2) seconds of the called person's completed greeting or a prerecorded identification message that states only the name and telephone number of the business, entity, or individual on whose behalf the call was placed, and that the call was for "telemarketing purposes.

Automatic Telephone Dialing System: means equipment which has the capacity-to store or produce telephone numbers to be called, using a random or sequential number generator; and to dial such numbers

Established Business Relationship: a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber's purchase or transaction with the entity within the eighteen (18) months immediately preceding the date of the telephone call or on the basis of the subscriber's inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the call, which relationship has not been previously terminated by either party.

Negative Option Plan: a solicitation plan in which the seller interprets the consumer's silence, or failure to take an affirmative action to reject goods or services or cancel an agreement as acceptance of the offer.

Telemarketing/Telephone Solicitation: a plan, program, or campaign utilizing a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, services, or a charitable contribution which is transmitted to any person.

Unsolicited Advertisement: any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person's prior express invitation or permission.

7. The rules from the two agencies complement each other, but have different focuses. The FTC's Telemarketing Sales Rule emphasizes the manner and content of the communication between consumers and telephone solicitors, while the FCC rules focus exclusively on the manner of placing telemarketing calls. The differences and similarities have been highlighted in the table in Appendix 2. The specific details on each aspect of the new rules from the FTC and the FCC may be found in the following authorities and references.

47 CFR 64.1200 FCC Do Not Call

47 CFR 64.1201 FCC Restrictions on Billing Names and Address Disclosure

47 USCS 227 FCC Restrictions on Use of Telephone Equipment
16 CFR 310 FTC Abusive Telemarketing Acts
15 USCS 6102 FTC Telemarketing Rule
15 USCS 6103 FTC Actions by States
15 USCS 6104 FTC Actions by Private Persons

www.ftc.gov

www.fcc.gov

[Telemarketing Sales Rule](#)

8. This LAPA was drafted by LCDR Dwain Alexander, JAGC, USNR, NAVCIVLAWSUPACT 106. LCDR Alexander's day job is legal assistance attorney for NLSO MIDLANT . For Code 16 resources, please contact us at legalassistance@jag.navy.mil or call at (202) 685-4637 or DSN 325-4637.

Very respectfully,

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